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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,935	10/31/2003	Laura Niederhofer		8936
40985	7590	11/15/2004		
LAURA S. NIEDERHOFER 1720 LOCHAVEN DRIVE WOODBURY, MN 55125			EXAMINER VANATTA, AMY B	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 11/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/697,935

Applicant(s)

NIEDERHOFER, LAURA

Examiner

Amy B. Vanatta

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: The word "loops" is misspelled as "lops" in line 7. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is indefinite in reciting "one or more of a plurality of loops", since it is unclear whether "one or more" loops are being claimed, or a plurality of loops are being claimed.

Claim 1 is rendered indefinite by the recitation that the loop hangs down "in the front". It is unclear whether this is referring to the front of the loop, or the front of the garment.

Claim 1, line 7, recites "the loop fold" without antecedent basis.

Claim 4 recites "the flexible, durable material" without proper antecedent basis.

Claim 10 recites "the detachable infant toys" and "the secured toys" without antecedent basis.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hill (US 2,442,895).

Hill discloses an apron, which forms a “bib” as claimed. The garment includes a body (1) made of flexible fabric (col. 1, lines 42-44; col. 1, line 52 thru col. 2, line 1), a means for attaching the body around the wearer’s neck (1c,1d), and a means for attaching the body around the wearer’s torso (4). The garment includes loops (2,3) each loop having two ends secured to the body as claimed. The loops are made of strips of fabric (col. 1, lines 42-43), which is “cloth material” as in claim 4. The two ends of the loops are securing by sewing (col. 1, line 49), as in claim 5. The ends of the loops are secured adjacent to each other to form a loop fold. The loop fold of at least one of the loops (see loop 2) is shown oriented downwards in Fig. 2, as in claim 1. The loop 2 hangs down in the front of the loop, as in claim 1. Strap 4 is a detachable device which is attached to at least one of the loops as in claim 8.

Regarding claim 10, the fabric of the apron is inherently capable of being washed in some manner, thus being “washable”. The loops 2,3 have two ends secured to the body adjacent one another. Loop 2 clearly hangs down when the garment is donned, as shown in Fig. 2. It is noted that whether the loops 3 are hanging down, sideways,

etc. is based on the orientation of the garment. When the strap 4 is not attached to loops 3, for example before the garment is totally put on and secured, or when the garment is about to be removed, the flaps 1a would fall downwards due to gravity, and when the flaps 1a are thus positioned, the loops 3 may be said to be "hanging down" to the extent recited in claim 10. Also, the loops 3 would be oriented such that they are "hanging down" at other times, such as when the garment is not on a wearer. The loops 2,3 are made of material which is strong enough and secured well enough to the bib body to withstand tugging on the loops by strap 4 during wear and during tightening of the strap 4 when donning the garment. Thus, the material is clearly strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

Although Hill does not disclose the use of the garment on an infant, and does not disclose the use of the loops to hold detachable infant toys, such recitations amount to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

6. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Williamson (US 5,566,391).

Williamson discloses an apron, which forms a "bib" as claimed. The garment includes a body (12) made of flexible fabric (see col. 2, line 25, which discloses canvas), a means for attaching the body around the wearer's neck (15a), and a means for attaching the body around the wearer's torso (15b, 15c). The garment includes loops (16, 20, 30) each loop having two ends secured to the body adjacent to each other as claimed. The fabric of the apron is washable, since canvas is washable (col. 2, line 25). The loops "hang down" to the extent claimed, since they hang away from the surface of the sheet 12 a sufficient distance such that items 22,18 can be inserted therein. It is noted that whether the loops are hanging down, sideways, etc. is based on the orientation of the garment. For example, when paint cans are not positioned within the loops 18,20 and the wearer bends over at the waist, the loops hang down as claimed. Also, the loops would be oriented such that they are "hanging down" at other times, such as when the garment is not on a wearer. The loops are made of material which is strong enough and secured well enough to the bib body to hold heavy items, such as paint cans. Thus, the material is clearly strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

Although Williamson does not disclose the use of the garment on an infant, and does not disclose the use of the loops to hold detachable infant toys, such recitations amount to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not

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differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

7. Claims 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (US 2002/0029400).

Smith discloses an apron, which forms a "bib" as claimed. The garment includes a body made of flexible fabric (see paragraph 0016, which discloses denim), a means for attaching the body around the wearer's neck (12,14; paragraph 0030), and a means for attaching the body around the wearer's torso (60,160). The garment includes loops on strip 26 which are part of a hook and loop fastener (paragraph 0019). The loops of a hook and loop fastener are inherently attached to the base of the fastener strip with the two ends of the loop adjacent one another, so that the loop is closed and can be attached to the mating hooks. Smith discloses at least one detachable device (27a, 27b, 27c, 27d)) which is attached to at least one of the loops. The devices 27a-27d are infant toys to the extent claimed, since they are used to entertain or capture the attention of a child. At least one detachable infant toy (27a) is attached to at least one of the one of more loops (on strip 26) as in claim 9 (see paragraph 0019). Regarding claim 10, the fabric of the apron is washable, since denim is washable. Regarding the recitation in claim 10 that the loops "hang down", the loops on strip 26 do hang away from the surface of the strip a sufficient distance such that the mating hooks can be inserted therein. It is noted that whether the loops are hanging down, sideways, etc. is based on the orientation of the garment. For example, when a wearer of the garment

bends over at the waist, the loops “hang down” as claimed. Also, the loops would be oriented such that they are “hanging down” at other times, such as when the garment is not on a wearer. The loops are made of material which is strong enough and secured well enough to the bib body to withstand pulling forces associated with disengaging the mating hooks therefrom (i.e. to remove items 27a-27d). Since it is disclosed that the toys 27a-27d are removable, the material of the loops is strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

8. Claims 1, 2, 4-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bronson (US 5,815,834).

Bronson discloses a vest, which forms a “bib” as claimed. The garment includes a body made of flexible fabric (col. 2, lines 9-10), a means for attaching the body around the wearer’s neck (straps with fasteners 4,4a), and a means for attaching the body around the wearer’s torso (the waistband shown in Figs. 1-2). The garment includes loop 2 which forms the claimed “one or more loops”. The garment also includes a loop formed by strap 18 (see Fig. 6). The loops (2,18) have two ends secured to the body as claimed. The loop (18) is made of a strip of cloth material, as in claim 4 (col. 2, lines 52-53). The two ends of the loop 2 are secured to the garment by sewing (col. 2, line 11), as in claim 5. The two ends of at least one of the loops (2) are secured adjacent each other with the loop fold oriented downwards as in claim 1 (see Fig. 1). The two



ends of at least one of the loops (18) are secured apart from each other as in claim 7 (see Fig. 6).

Regarding claim 10, the fabric of the apron is inherently capable of being washed in some manner, and thus is "washable" to the extent claimed. The garment has a plurality of loops (2 and 18). Loop 2 has two ends secured to the body adjacent to each other so that the loop hangs down. Loop 18 has two ends which are secured sufficiently adjacent one another that the loop hangs down, since the strap forming the loop is long. See Fig. 6, showing the loop formed by strap 18 as "hanging down" to the extent recited in claim 10. The loops are clearly made of material which is strong enough and is secured well enough to the bib to withstand the forces put on the loops during normal attachment and detachment of toys to the loops, to withstand playing with such toys and to withstand normal cleaning of the bib.

Although Bronson does not disclose the use of the loops to hold detachable infant toys, such recitations amount to the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bronson (US 5,815,834).

Bronson discloses a garment as claimed, including one or more loops which are made of a flexible, durable material (see loop 2). Bronson does not disclose the cross sectional dimension of the loop 2, however it is intended to be of a size which can be threaded through the loop of a pacifier. Thus, it appears to be of a size similar to that recited in claim 3. It would require only ordinary skill in the art to determine, through routine experimentation, the optimal range for the size of the loop 2, depending upon the sizes of the pacifiers which will be used with the loop. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the loop 2 in the garment of Bronson such that its maximum cross sectional dimension is less than about 0.50 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

11. Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perez (US 5,953,753) in view of Beiter (US 2,056,998).

Perez discloses a cape which forms a "bib" as claimed. The garment includes a body made of flexible fabric (col. 4, lines 5-7) and a means for attaching the body around the wearer's neck (22,24; col. 4, lines 9-17). The garment includes a loop (see 32 in Fig. 5) which forms the claimed "one or more of a plurality of loops" as in claims 1

and 9. The loop (32) has two ends secured to the body portion adjacent to each other, with the loop fold oriented vertically such that the loop hangs down in the front when the bib is upright or in normal use. Perez shows at least one device (44, 45, 48) attached to the loop. The device may be a toy, as in claim 9 (see Fig. 5 and col. 6, lines 10-11 and col. 8, lines 53-54). The devices or toys (44, 45, 48) are attached by means of a key ring 40 (col. 5, lines 39-40), which is a detachable means of fastening (see Fig. 5). Perez also discloses that the toys or devices may be attached by a clip for reversibly attaching these objects (col. 8, lines 51-52). Thus, the devices or toys are detachably attached to the loop, as in claims 8 and 9.

Thus, the cape of Perez has the claimed structure, except the garment does not include means for attaching the garment body around the torso. Perez merely shows means for attaching around the neck. Beiter shows a cape for use during hair cutting which includes means for attaching the body of the garment around the neck (see upper fasteners 16,17 in Figs. 1 and 3) and means for attaching the garment around the torso (see lower fasteners 16,17 in Figs. 1 and 3). Garments in the form of capes, bibs, and aprons commonly are provided with both a neck and torso fastener, such as shown by Beiter, in order to more securely close the garment, to prevent the garment from coming open, which would allow soiling of the underlying garments. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cape of Perez with a means for attaching the body around the wearer's torso, such as shown by Beiter, in order to more securely close the garment, to better protect the wearer and the underlying garments.

***Response to Arguments***

12. Applicant's arguments filed 8/2/04 have been fully considered but they are not persuasive.

With regard to Hill, Applicant argues that claim 1 defines over Hill since it has been amended to recite that the loops are in the front when in use. It is noted that claim 1 does not clearly recite such a structure. Claim 1 merely recites that the loop fold is oriented vertically "so that the loop hangs down in the front when the bib is upright or in normal use". It is unclear whether "in the front" is describing the loop or the bib. The front could be referring to the front of the loop. That is, the loop hangs down at the front portion of the loop. In such a case, Hill still reads on claim 1, although the loop (2) is at the back of the garment, since the loop (2) does have a structure such that the loop hangs down at the front portion of the loop, and thus the loop hangs down "in the front" as claimed.

With regard to Williamson, it is noted that although claim 1 as amended defines over Williamson, claim 10 still reads on Williamson since this claim was not amended.

With regard to Smith, applicant argues that claim 1 as amended now recites the orientation of the garment when the loops "hang down". Thus, claim 1 as amended defines over Smith. It is noted that claims 9 and 10 still reads on Smith since these claims were not amended.

Regarding Bronson, Applicant argues that Bronson shows only one loop, while Applicant describes "one or a plurality of loops". It is noted that the claims which recite one or more loops, or "one or a plurality of loops" encompass a design with just one

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loop. Applicant argues that the loop 18 of Bronson is formed by a strap and is not a means for attaching objects, as is Applicant's loop. The Examiner notes that such a limitation of a "means for attaching objects" is not claimed. The claimed recitations are disclosed by Bronson, since the strap 18 does form a loop structure when the ends are attached to the garment as shown in Fig. 6.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

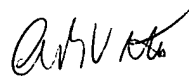
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy B. Vanatta whose telephone number is 703-308-2939. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Amy B. Vanatta  
Primary Examiner  
Art Unit 3765